

## **ATTACHMENT A**

### **Factual Basis for Guilty Plea**

#### ***RINs and Tax Credits***

- 1) Defendant DEAN DANIELS (“Defendant”) is pleading guilty because he is guilty of the charges contained in Counts 1 and 2 of the Information. If this case were to proceed to trial, the United States could prove each element of the offenses beyond a reasonable doubt. The following facts, among others would be offered to establish Defendant’s guilt:
- 2) Laws passed by Congress, particularly the Energy Independence and Security Act of 2007, required the U.S. Environmental Protection Agency (EPA) and the U.S. Internal Revenue Service (IRS) to promote renewable fuel production and use in the United States.
- 3) To this end, the EPA created a program requiring petroleum refiners and importers to have renewable fuel in their product portfolio. Under this program, refiners and importers must produce a certain amount of renewable fuel, or as an alternative to physically producing this fuel, they could purchase *credits* (also called “renewable identification numbers” or “RINs”) from renewable fuel producers.
- 4) Renewable fuel producers generate RINs when they produce qualifying renewable fuels, such as biodiesel, in compliance with EPA regulations. Once a RIN is generated, it can be traded or sold on the open market.
- 5) RINs could be transmitted attached to the volume of fuel they were generated on, or, if lawfully separated from the fuel, they could be transmitted independent of the fuel. There are various regulations governing when and how RINs can be separated from the underlying fuel.

- 6) Prior to July 1, 2010, businesses dealing in RINs sent reports to the EPA about their RIN activity, including generations, purchases, and sales. After July 1, 2010, such RIN transactions were reported electronically through the EPA Moderated Transaction System (EMTS).
- 7) Biodiesel RINs could not be generated unless the biodiesel produced met a set of industry standards known as ASTM D6751.
- 8) Throughout 2009, 2010, and 2011, refundable tax credits were available as well. Specifically there was a one dollar per gallon “biodiesel mixture” tax credit for those who blended pure 100% biodiesel with petroleum-based diesel and then sold the resulting mixture for use as a motor vehicle fuel. If blenders complied with IRS regulations and submitted appropriate paperwork, they could earn one dollar per gallon of biodiesel, paid by the U.S. Department of Treasury. In the biodiesel industry, this program was known as the “blender’s credit” or the “blender’s tax credit.”
- 9) It was illegal to claim a blender’s tax credit for biodiesel unless it was produced, bought, blended, and sold in compliance with IRS regulations. In particular, it was illegal to claim the credit unless the underlying biodiesel met ASTM D6751 and the blender submitted a legitimate “Certificate for Biodiesel” to the IRS.
- 10) Throughout 2010 and 2011, Defendant worked in concert with others, including RICKY SMITH and WILLIAM BRADLEY, to operate New Energy Fuels (NEF), of Waller, Texas.
- 11) NEF purported to be a producer of biodiesel, but the vast majority of its production during this time was actually a different, lesser-quality fuel known as “bunker” or “cutter.” NEF sold their bunker to a fuel blender in Channelview, Texas (“Channelview”).
- 12) Defendant supervised and directed the production of NEF’s fuel throughout this period.

- 13) Defendant was aware that the fuel that NEF was producing and selling to Channelview was not biodiesel.
- 14) From on or about July 1, 2010, through the end of 2011, NEF generated RINs for the purported production of biodiesel. Electronic requests submitted to EMTS by NEF document its generation of RINs throughout this period. In addition, NEF Partners, Inc. (an entity closely related to NEF, and operated by the same individuals, including Defendant) claimed tax credits associated with the production and blending of biodiesel throughout 2011. NEF submitted numerous records to the IRS to claim these tax credits, including IRS Form 8849s and multiple signed Certificates of Biodiesel.
- 15) Throughout this period, Defendant was aware that NEF was generating biodiesel RINS and that NEF Partners was claiming biodiesel tax credits.
- 16) Throughout this period, Defendant was aware that biodiesel RINs could not be lawfully generated for the fuel produced by NEF and sold to Channelview, nor could biodiesel tax credits be lawfully claimed.
- 17) From on or before July 1, 2010, through the end of 2011, Defendant conspired with RICKY SMITH, WILLIAM BRADLEY, and others known to the government, to fraudulently generate and sell biodiesel RINs knowing that such actions were illegal.
- 18) Throughout this period, Defendant provided funding for the daily operation of NEF.
- 19) Between on or about July 1, 2011, and December 31, 2011, NEF sold its fuel to Co-Conspirator A and his company (Company A), with the understanding that Company A would then sell the fuel to Channelview. Numerous invoices document the sale of the fuel to

Company A, as well as Company A's sale to Channelview. NEF continued to transport the physical fuel directly from their plant to Channelview.

- 20) From on or about January 1, 2011, through the end of 2011, Defendant conspired with RICKY SMITH, WILLIAM BRADLEY, and others known to the government, to fraudulently claim biodiesel tax credits, knowing that such actions were illegal.
- 21) From on or about October 1, 2011, through February 2012, Defendant worked in concert with others, including RICKY SMITH in operating Chieftain Biofuels.
- 22) Chieftain Biofuels purported to be a producer of biodiesel, but their production methods during this time were simply to filter oil and grease provided by Co-Conspirator A and Company A. Chieftain Biofuels would then sell the filtered material back to Company A. Numerous invoices document the sale of this material to Company A.
- 23) Defendant was aware that Chieftain Biofuels was not producing biodiesel.
- 24) From on or about October 2011 through February 2012, Defendant conspired with others including RICKY SMITH, WILLIAM BRADLEY, and Co-Conspirator A and others known to the government, to fraudulently generate biodiesel RINS and claim biodiesel tax credits at Chieftain Biofuels, knowing that such actions were illegal.
- 25) From on or about October 1, 2011, through February 2012, Chieftain Biofuels generated RINs for the purported production of biodiesel. In addition, Chieftain Biofuels claimed tax credits associated with the production and blending of biodiesel from on or about October 1, 2011, through December 2011.
- 26) Defendant was aware at the time that biodiesel RINs could not be lawfully generated for the fuel produced by Chieftain Biofuels, nor could biodiesel tax credits be lawfully claimed. Electronic requests submitted to EMTS by Chieftain document its generation of RINs

throughout this period. Chieftain also submitted numerous records to the IRS to claim the tax credits, including IRS Form 8849s and signed Certificates of Biodiesel.

***Transportation of Hazardous Material***

- 27) No later than June 2010, Defendant mandated that NEF use an “acid-wash” process to produce its fuel. The acid wash process involved mixing brown grease, sulfuric acid, and methanol (sulfuric acid and methanol are hazardous materials). The by-product of this production process was a waste material that employees of NEF referred to as “decant.”
- 28) The decant material frequently had a low pH, including a pH of less than two. Defendant was aware that the decant material sometimes had a pH of less than two.
- 29) After NEF’s previous receiver of decant refused to take any more loads due to a low pH, the material started to build up at NEF.
- 30) On or about January 2011, NEF truck driver Lonnie Perkins indicated that he knew of a wastewater treatment plant that would take the decant. Perkins did not give, and Daniels did not ask for, the name or location of the wastewater treatment plant. Defendant agreed to pay Perkins approximately \$1200 to \$2000 for each load hauled.
- 31) On or about January 2011, Perkins began removing loads of “decant” from NEF using a truck provided by NEF and Defendant. Defendant knew that there was a risk that some of the loads might have a pH of less than two. Nonetheless, he did not always treat or test the outgoing decant to insure it was non-hazardous prior to offering it to Perkins for transportation.
- 32) Defendant never provided Perkins with hazardous materials vehicle placards.
- 33) On May 1, 2011, and in accordance with his arrangement with Defendant, Perkins transported a load of decant. This load had a pH of less than two.

- 34) The truck that the driver used to transport the hazardous waste was owned at the time by NEF. The truck was not placarded as required by 49 C.F.R. § 172.506.
- 35) Defendant failed to insure that “decant” materials removed from NEF were tested for hazardous characteristics, despite knowledge that there was a high risk and probability that the materials would have a pH less than two.
- 36) By failing to insure the waste was tested or treated despite knowledge of the risks, Defendant displayed a deliberate indifference and conscious disregard for the consequences of his conduct.
- 37) As a result of this disregard, the defendant offered a hazardous material for transport and failed to provide the transporter with vehicle placards that identified the material as hazardous.